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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,307	06/20/2001	Adam Kolawa	41182/JEC/P396	4570

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EXAMINER
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SELLERS, DANIEL R

ART UNIT	PAPER NUMBER
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2615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/885,307

Applicant(s)

KOLAWA ET AL.

Examiner

Daniel R. Sellers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,9,11,24-29,32,33,57,59-66,68,70 and 72-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 64,78 and 84 is/are allowed.
- 6) ☒ Claim(s) 1-6,9,11,24-29,32,33,57,59-63,65,66,68,70,72-77 and 79-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. **Claims 1-6, 9, 11, 24-29, 32-33, 57, 59-61, 63, 65-66, 68, 70, 72-74, 76, 77, and 79-83** are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Atcheson, Blum, Horvitz et al. (US Pub 2003/0046421), Yee, and Takahisa (hereinafter Atcheson, Blum, Horvitz, Yee, and Takahisa respectively)
3. Regarding **claim 1**, the method for creating a customized audio program, see Atcheson. Atcheson teaches the use of user preferences to select a customized audio program (Col. 1, lines 7-19 and Col. 2, lines 7-15). The system compares received audio preferences with the audio characteristic information and selects the audio piece (Col. 2, lines 16-27). The user can download the piece and listen to it on a user station (Col. 3, lines 58-63). Inherently the user downloads at least a portion, detects a playback condition, and it is output through a computer or a hi-fi system. Atcheson, however, does not teach the automatic processing of audio signals for compiling the audio characteristic information, nor do they teach the delivery of a signal according to a broadcast time.

Blum teaches a system that compiles audio characteristic information of an audio piece for classification and retrieval (Col. 2, line 51- Col. 3, line 67). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Atcheson and Blum for the purpose of including acoustic information

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associated with the piece (Blum, Col. 1, lines 24-42 and Col. 2, lines 1-25). However, the combination of Atcheson and Blum do not teach the generation of audio characteristic information in real time with the broadcast of the audio pieces.

Horvitz teaches a communication system that learns and uses a user's preference to deliver content (p. 1, para. 0008). Specifically, Horvitz teaches real-time classification, or generation of characteristic information (p. 14, para. 0226). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Atcheson, Blum, and Horvitz for the purpose of providing a learning system that can adapt to new content that has not previously been classified. However the combination of Atcheson, Blum, and Horvitz do not teach the delivery of an audio piece according to a broadcast or scheduled time.

Yee teaches the selection of music according to broadcast times and user preferences (Col. 3, lines 5-9). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Atcheson, Blum, Horvitz, and Yee for the purpose of providing a user with automatic channel or station selection (Yee, Col. 1, lines 54-59 and Col. 3, lines 42-50). Neither Atcheson, Blum, Horvitz, nor Yee teach selectively tuning to a plurality of channels for receiving selected audio pieces based on the preference information.

Takahisa teaches the step of tuning to a plurality of channels for receiving a plurality of pieces (Col. 20, line 64- Col. 21, line 23). Takahisa also teaches that programming can be recorded (Col. 19, lines 6-19), wherein the programming is temporarily stored to be output when a playback condition is detected (i.e., the system

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of Takahisa changes output from Tuner A to Tuner B). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Atcheson, Blum, Horvitz, Yee, and Takahisa for the purpose of playing uninterrupted audio programs.

4. Regarding **claim 2**, the further limitation of claim 1, Blum teaches audio characteristic information that indicates subject matter (Col. 3, lines 30-34 and lines 47-51).
5. Regarding **claim 3**, the further limitation of claim 1, the combination teaches that the audio piece includes music.
6. Regarding **claim 4**, the further limitation of claim 1, it is inherent that the audio piece includes voice.
7. Regarding **claim 5**, the further limitation of claim 1, the combination teaches that the audio piece can contain advertisements (see Yee).
8. Regarding **claim 6**, the further limitation of claim 1, Yee teaches the use of a particular theme, or general topic, for selecting a broadcast audio piece (Col. 3, lines 35-41).
9. Regarding **claim 9**, the further limitation of claim 1, see the preceding argument with respect to claim 6. Yee teaches the use of a radio broadcast.
10. Regarding **claim 11**, the further limitation of claim 1, the combination teaches the use of a network (see Atcheson, Fig. 1).
11. Regarding **claim 24**, see the preceding argument with respect to claim 1. The combination teaches these features, wherein Takahisa teaches the feature of tuning to

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a plurality of audio channels and outputting temporarily stored audio pieces and Horvitz teaches the real-time generation of characteristic information.

12. Regarding **claim 25**, the further limitation of claim 24, see the preceding argument with respect to claim 2.

13. Regarding **claim 26**, the further limitation of claim 24, see the preceding argument with respect to claim 3.

14. Regarding **claim 27**, the further limitation of claim 24, see the preceding argument with respect to claim 4.

15. Regarding **claim 28**, the further limitation of claim 24, see the preceding argument with respect to claim 5.

16. Regarding **claim 29**, the further limitation of claim 24, see the preceding argument with respect to claim 6.

17. Regarding **claim 32**, the further limitation of claim 24, see the preceding argument with respect to claim 9. Yee teaches a radio broadcast.

18. Regarding **claim 33**, the further limitation of claim 24, Atcheson teaches a network of computers (Col. 3, lines 40-50).

19. Regarding **claim 57**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches the transmitting of a selected audio piece, which is compared to automatically compiled audio characteristic data. The combination also teaches the use of computing a distance between a user preference vector and an audio characteristic vector (see Blum, Col. 3, lines 22-29).

20. Regarding **claim 59**, the further limitation of claim 1, the combination teaches the reception of the audio characteristic information in advance of the receipt of the audio pieces (Takahisa, Col. 2, lines 24-26).

21. Regarding **claim 60**, the further limitation of claim 1, the combination teaches the reception of the audio characteristic information concurrent of the receipt of the audio pieces (Takahisa, Col. 2, lines 15-23).

22. Regarding **claim 61**, the further limitation of claim 1, the combination teaches a dynamically generated audio program based on a selected audio piece (i.e., it creates a program according to the user's preference).

23. Regarding **claim 63**, the further limitation of claim 1, the combination teaches that the audio is broadcast at scheduled times.

24. Regarding **claim 65**, the further limitation of claim 1, it is inherent that the playback condition is the user tuning in to a station.

25. Regarding **claim 66**, the further limitation of claim 1, the combination teaches that the playback condition is a playback time (Takahisa, Col. 22, lines 24-30).

26. Regarding **claim 68**, see the preceding argument with respect to claim 1. The combination teaches these features.

27. Regarding **claim 70**, the further limitation of claim 68, see the preceding argument with respect to claim 57. The combination teaches an audio vector.

28. Regarding **claim 72**, the further limitation of claim 68, see the preceding argument with respect to claim 59. The combination teaches these features.

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29. Regarding **claim 73**, the further limitation of claim 68, see the preceding argument with respect to claim 60. The combination teaches these features.

30. Regarding **claim 74**, the further limitation of claim 68, see the preceding argument with respect to claim 61. The combination teaches these features.

31. Regarding **claim 76**, the further limitation of claim 68, see the preceding argument with respect to claim 63. The combination teaches these features.

32. Regarding **claim 77**, the further limitation of claim 68, see the preceding argument with respect to claim 1. The combination teaches these features of playback when a playback condition is detected.

33. Regarding **claim 79**, the further limitation of claim 77, see the preceding argument with respect to claim 65. The combination teaches these features.

34. Regarding **claim 80**, the further limitation of claim 77, see the preceding argument with respect to claim 66. The combination teaches these features.

35. Regarding **claim 81**, the further limitation of claim 68, see the preceding argument with respect to claim 2. In the combination, Blum teaches this feature.

36. Regarding **claim 82**, the further limitation of claim 68, see the preceding argument with respect to claim 9. In the combination, Yee teaches this feature.

37. Regarding **claim 83**, the further limitation of claim 68, see the preceding argument with respect to claim 11. In the combination, Atcheson teaches this feature.

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38. **Claims 62 and 75** are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination as applied to claim 61 above, and further in view of Logan et al., U.S. Pat. No. 6,088,455 (hereinafter Logan).

39. Regarding **claim 62**, the further limitation of claim 51, see the preceding argument with respect to claim 1. The combination teaches the use of scheduled broadcast times, but does not teach a user-scheduled play time. Logan teaches a user-scheduled play time (Col. 1, lines 38-63 and Col. 2, lines 9-17). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Atcheson, Blum, Yee, Takahisa, and Logan for the purpose of providing prior broadcast material.

40. Regarding **claim 75**, the further limitation of claim 68, see the preceding argument with respect to claim 62. The combination teaches these features.

***Allowable Subject Matter***

41. **Claims 64, 78, and 84** are allowed.

42. The following is a statement of reasons for the indication of allowable subject matter:

43. Regarding **claim 64**, the prior art of record does not teach or suggest that a playback condition is the powering-on of the user station (i.e., the buffer is recording a user's preferred audio pieces in a powered-off state).

44. Regarding **claim 78**, see the preceding argument with respect to claim 64. The prior art of record does not teach or suggest that a playback condition is the powering-

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on of the user station (i.e., the buffer is recording a user's preferred audio pieces in a powered-off state).

45. Regarding **claim 84**, see the preceding argument with respect to claim 64. The prior art of record does not teach or suggest the means recited, nor that a playback condition is the powering-on of the user station (i.e., the buffer is recording a user's preferred audio pieces in a powered-off state).

### ***Response to Arguments***

46. Applicant's arguments with respect to claims 1-6, 9, 11, 24-29, 32-33, 57, 59-66, 68, 70, and 72-84 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel R. Sellers whose telephone number is 571-272-7528. The examiner can normally be reached on Monday to Friday, 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571)272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DRS

  
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SUPERVISORY PATENT EXAMINER